UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/WG.13/2
28 November 1997

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended Working Group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
Fourth session
Geneva, 2-13 February 1998

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

CONTENTS

	Page
Introduction	3
I. COMMENTS RECEIVED FROM STATES	3
A. Costa Rica	3
B. Egypt	5
C. Finland	7
D. Guatemala	7
E. Morocco	10

CONTENTS (continued)

		Page
II.	COMMENTS SUBMITTED BY SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS	10
	A. United Nations Educational, Scientific and Cultural Organization	10
	B. International Committee of the Red Cross	11
III.	COMMENTS SUBMITTED BY NON-GOVERNMENTAL ORGANIZATIONS	24
	A. International Federation Terre des Hommes	24
	B. World Alliance of Young Men's Christian Associations	24

Introduction

1. In paragraph 14 of its resolution 1997/78 of 18 April 1997, entitled "Rights of the child", the Commission on Human Rights requested the Secretary-General to transmit the report of the working group on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (E/CN.4/1997/96) to Governments, relevant United Nations bodies and specialized agencies, the Committee on the Rights of the Child and intergovernmental and non-governmental organizations, and to invite their comments thereon in time for circulation prior to the next session of the working group.

2. Pursuant to that resolution, the Secretary-General, on 30 July 1997, addressed requests to Governments, United Nations bodies, specialized agencies, the Committee on the Rights of the Child and intergovernmental and non-governmental organizations concerned, for comments on the report of the working group on its third session.

3. By 25 November 1997, replies had been received from the following States: Finland, Guatemala.

4. Replies were also received from the United Nations Educational, Scientific and Cultural Organization and the International Committee of the Red Cross.

5. Comments were submitted by the International Federation Terre des Hommes and the World Alliance of Young Men's Christian Associations.

6. The present report contains a summary of the substantive replies received. It also includes information submitted by the Governments of Costa Rica, Egypt and Morocco pursuant to Commission on Human Rights resolution 1996/85, received after the preparation of documents E/CN.4/1997/WG.13/2 and Add.1-2.

7. Any additional replies will be reproduced in an addendum to the present document.

I. COMMENTS RECEIVED FROM STATES

A. Costa Rica

[Original: Spanish]
[22 January 1997]

Preamble (E/CN.4/1996/102, annex)

8. The Government of Costa Rica suggests the deletion of the fourth preambular paragraph.

Article 1

9. Costa Rica is in favour of the option proposed in the first paragraph, namely, maintaining the age limit at 18 and deleting the words "a direct".

Any situation that impairs respect for the rights of the child should be avoided since otherwise the child is placed at risk both directly as well as indirectly.

Article 2

10. Costa Rica proposes that the words "a nadie" should be replaced by "ninguna persona".

11. Costa Rica suggests that the words in square brackets reading "Without prejudice to article 1", should be deleted, that the word "nadie" should be replaced by "ninguna persona", and that the age limit should be maintained at 18.

12. Costa Rica proposes the deletion of paragraph 3 since voluntary enlistment should not be used as justification for the direct or indirect participation of minors under the age of 18 in hostilities.

13. Costa Rica is in favour of the first alternative, provided that the age limit is maintained at 18. Furthermore, it suggests the replacement of the word "matriculación" by "matrícula".

New article A

14. Costa Rica considers that the age limit should be maintained at 18 and proposes that the words in square brackets "which are parties to" should be replaced by the words "involved in", since States should do everything possible to ensure that armed groups on their territory comply with the provisions of the protocol.

Article 3

New article B

15. The Government of Costa Rica agrees with the informal drafting group that this article should be deleted and replaced by a new eighth preambular paragraph.

New article C

16. The Government of Costa Rica agrees with the informal drafting group that this article should be moved to the preambular part.

Article 4

17. Costa Rica considers that, on this specific point concerning the obligation not to recruit minors under 18 years of age or to permit their participation in hostilities, only States parties in a position to do so are in fact able to assume this obligation, and therefore agrees with this alternative.

Article 5

New article D

18. Costa Rica supports the adoption of this new article but suggests that paragraph 2 should read: "Seek further clarification, information or comments from any source, including where applicable the sources of the original information", and that paragraph 3 (a) should read: "Such a visit could take place after consultation with the State party concerned."

Article 8

19. Suggests that this Protocol should enter into force three months after the deposit of the tenth instrument of ratification or accession.

B. Egypt

[Original: Arabic]
[17 January 1997]

General comments

20. The protocol (E/CN.4/1996/102, annex) should include a paragraph stating explicitly that invasion, foreign occupation, the use or threat of force and aggression are among the principal factors which threaten the protection of, and respect for, the rights of the child, particularly in times of armed conflict, in order to maintain the full effectiveness of popular armed resistance to invasion and occupation without any restriction or direct or indirect derogation on the pretext of upholding human rights (Cuban proposal). We support the use of the term "armed conflicts" and reject the term "hostilities" since the former has a firmly established and clearly defined legal connotation in international humanitarian law.

Article 1

21. The minimum age for recruitment should be set at 18 years unless national legislation stipulates a lower age. This would allow a larger number of States to accede to the protocol, particularly since many developing countries tend to recruit persons under 18 years of age as a means to tackle the problem of unemployment and overcome economic crises.

22. The text should be strengthened through the addition of the phrase "and provide the requisite legislative and administrative guarantees" after the words "all feasible measures" to ensure that these children do not take part in military operations. In this way we would re tain 18 years as the minimum acceptable age for recruitment while, at the same time, providing the highest possible degree of international protection for children who, under some legal systems, can be recruited for reasons of an economic rather than a military nature.

23. The alternative wording of article 1 should not refer to "direct" participation in armed conflicts. It would be preferable to support the viewpoint that the prohibited participation by children in military operations

should not be designated as direct participation since the actual practice in armed conflicts hardly allows any conclusions to be derived from the proposed distinction between direct and indirect participation by children in the conflict. The protection would undoubtedly be more comprehensive if the protocol confined itself to prohibiting any form of participation by children in armed conflicts.

Article 2

24. With regard to the age for enrolment in military schools or academies, we agree with the alternative wording in article 2, paragraph 4, of the draft protocol since the proposed text excludes military schools and academies from the scope of the prohibition on the ground that military training, even for persons under 18 years of age, forms part of the recognized national right of every country to legitimate self-defence and does not expose children to any unacceptable risks.

New article A

25. We are not in favour of referring to non-governmental armed groups or militias as a category protected by the protocol. The reason for this is that, although children unquestionably require protection from enlistment in the ranks of these groups, the political and military circumstances of these entities vary to an extent that makes it not only difficult to subject them to a standard rule but also dangerous to accord them international legal status, which might be misinterpreted as granting them implicit recognition. Therefore, the members of such groups should either be covered by the conditions applicable to popular armed resistance groups, thereby subjecting them to the provisions and obligations of international humanitarian law to a certain extent, or should be regarded as groups that fail to meet the international requirements for classification as legal combatants, either as members of a regular army or a legitimate resistance movement, in which case, being totally beyond the pale of the law, there would be no point in placing them under any obligation.

Article 5

Paragraph 2 (a) of the new article D

26. The words "from any source" should be deleted, since empowering the Committee to seek information from any source would be contrary to the letter and spirit of the article, paragraph 1 of which contains the stipulation "if the Committee receives".

Paragraph 3 of the new article D

27. It is important to specify the conditions under which the Committee may initiate a confidential inquiry (e.g. if a State fails to provide the Committee with convincing and adequate replies, or if the Committee finds a State Party to be in violation of the provisions of this protocol, etc.), since the Committee should not be granted the unrestricted or unconditional

right to initiate a confidential inquiry. Paragraph 3 (a) should stipulate that such a visit could take place only with the consent of (and not after consultation with) the State Party concerned.

Paragraph 5 of the new article D

28. The wording of this paragraph is inconsistent insofar as it would be quite difficult to allow the Committee to decide, at its own discretion, whether to include a summary account of the results of the proceedings in its annual report while, at the same time, regarding these proceedings as "confidential" as indicated at the beginning of the paragraph. Hence, the Committee should not include any summary account of the results of the proceedings in its annual report without the explicit consent of the State concerned.

C. Finland

[Original: English]
[20 October 1997]

29. Finland stresses the importance of finalizing the draft optional protocol at the next session of the working group. The protocol should be a strong instrument, setting precise rules for the protection of children in armed conflicts. Reservations should not be admissible to the protocol.

30. Finland supports the age limit of 18 for taking part in hostilities. Distinction between "direct" and "indirect" participation should not be made because it has proved to be difficult to define it in practice. Furthermore, Finland supports strongly the inclusion in the operative part of a provision preventing recruitment of persons under 18 years by non-governmental armed groups. Finland is of the view that the age limit for the voluntary recruitment should be discussed together with the proposed provision on education and vocational training.

31. Finland finds that the Committee on the Rights of the Child could be mandated to supervise the fulfilment of the obligations undertaken in the protocol also by other means than by a reporting procedure.

D. Guatemala

[Original: Spanish]
[1 October 1997]

COMMENTS ON THE IMPORTANCE OF THE PROTOCOL

32. The State of Guatemala is of the view that the adoption of an optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts is of great importance for the protection of the rights of the child. The armed conflicts which have taken place in our region and in other parts of the world have brought home to us the fact that the involvement, either direct or indirect, of children in conflicts exposes them to particularly dramatic and violent situations with the result that they acquire an aggressive, violent and insensitive attitude to the sufferings of

others. Moreover, their direct participation in conflicts in many cases forces them to commit inhuman acts against civilians or fosters in them from a very early age feelings of racial and religious hatred towards nationals of other States.

33. Furthermore, the recruitment of children into the armed forces of States or by non-governmental armed groups deprives them of a normal education and their protective family environment; this has a direct impact on their development and is at variance with the provisions of article 27 of the Convention on the Rights of the Child, which states that "States parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, model and social development."

34. For these reasons, we firmly believe that the participation of children in conflicts or their recruitment by armies or non-governmental armed groups is unacceptable from every human rights point of view, even in cases where enlistment is voluntary.

35. The adoption of the Protocol requiring States parties to take the necessary steps to prevent the participation of children in armed conflicts will constitute a valuable contribution to international human rights standards and efforts to put an end to this nefarious practice. The Protocol is also of importance because it will increase the powers of the Committee on the Rights of the Child to look into possible cases of failure to comply with its provisions.

GUATEMALAN LEGISLATION ON THE SUBJECT

36. Article 236 of the Political Constitution of the Republic of Guatemala states that military service is a civic right and duty of Guatemalans. Moreover, article 68 of the Law establishing the army states that, on attaining majority (18 years of age), Guatemalan men are required to serve in the Guatemalan army for the period laid down in the relevant laws and regulations when required to do so. The same Law states that the available, mobilizable and territorial reserve shall consist only of citizens of 18 to 55 years of age.

37. Section VI of the Comprehensive Agreement on Human Rights, signed on 29 March 1994, which constitutes part of the Agreement on a Firm and Lasting Peace, reads as follows:

"VI. MILITARY CONSCRIPTION

"1. Conscription for compulsory military service must not be forced, nor should it be cause for violation of human rights and, therefore, while military service should continue to be a civic duty and right, it must be just and non-discriminatory.

"2. To that end, for its part, the Government of the Republic of Guatemala shall continue to adopt and implement the necessary administrative decisions and shall initiate, as soon as possible and in the spirit of this agreement, a new Military Service Act."

38. The Congress of the Republic is at present examining various bills dealing with military and social service that have been submitted to it. Article 59 of the Children and Young Persons Code (Decree No. 78-96 of the Congress of the Republic) which will enter into force on 27 March 1998, states the following:

> "In the event of armed conflict, children and young persons shall have the right not to be recruited and the State shall ensure compliance with the international humanitarian law standards applicable to them. The State shall adopt all possible measures to ensure that persons who have not reached the age of 18 shall neither participate directly in the hostilities nor be recruited for military service at any time."

COMMENTS ON THE ARTICLES OF THE DRAFT PROTOCOL

Article 1

39. Guatemala, in accordance with the comments made in section I of this document and the legislation referred to, proposes that the age of 18 years, which corresponds to the wording of article 1 of the Convention on the Rights of the Child, should be used, and that the words "a direct" should be deleted.

Article 2

40. Guatemala wishes to make the following observations on this article:

Paragraph 1: Guatemala proposes that this paragraph should be worded as follows to reflect the objectives of the optional Protocol: "States parties shall adopt the necessary measures to ensure that persons who have not attained the age of 18 are not recruited into their armed forces."

Paragraph 2: Guatemala proposes that this paragraph should be worded as follows: "States parties shall adopt the necessary measures to ensure that persons who have not attained the age of 18 years are not voluntarily recruited into their armed forces."

Paragraph 3: In accordance with the comments made in previous paragraphs, Guatemala proposes the deletion of this paragraph since the enlistment of persons under the age of 18 should not be allowed for any reason whatever, even on a voluntary basis.

Paragraph 4: Guatemala is of the view that this paragraph should be retained in the form in which it appears in the draft optional Protocol.

41. New article A

Guatemala considers that this new article A should be retained in the form in which it appears in the draft protocol.

42. Article 4

Guatemala proposes the adoption of the third option, namely, "A reservation incompatible with the object and the purpose of the present Protocol shall not be permitted."

43. Article 5, new article D and articles 6, 7, 8, 9 and 10

Guatemala is of the opinion that these articles should be retained in the form in which they appear in the draft text.

E. Morocco

[Original: French]
[17 January 1997]

44. On the subject of the age of recruitment, persons under the age of 18 should not be involved in hostilities, either directly or indirectly, and such persons should not be recruited, even on a voluntary basis.

45. No reservations should be admissible to the protocol in view of its optional nature.

46. The preparation of a "strong" text to which only those States able to comply with its provisions will accede, is desirable.

47. It is recalled that, in Morocco, young persons are not recruited into the army before reaching the age of 18. The same minimum age is laid down in the Royal Decree of 9 June 1996 in respect of recruitment for compulsory military service. Moreover, access to military training establishments is conditional upon the applicant's undertaking to serve in the army from the age of 18. Young students below that age who are accepted by military academies may abandon their schooling at any time.

II. COMMENTS SUBMITTED BY SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

A. United Nations Educational, Scientific and Cultural Organization (UNESCO)

[Original: English]
[1 October 1997]

General comments

48. Both the sexual exploitation of children and the fate of children in war are special cases. UNESCO supports all efforts to call attention to these horrific breaches of basic human rights. The Organization shares the view of the Committee on the Rights of the Child that the optional protocols should be used in cases of absolute necessity. Sufficient United Nations legislation to protect children is already in place. The most important task now is to see

that it is respected. Notwithstanding the above, the participation of a specialist from UNESCO in the Working Groups dealing with the elaboration of two optional protocols to the Convention on the Rights of the Child, is desirable.

Report of the Working Group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts (E/CN.4/1997/96)

49. Through its Street Children and Children in Distress Programmes, UNESCO calls attention to exploitation, both sexual and through labour, of young children. Its Culture of Peace Programme works to promote peace and, in the event of armed conflict, the protection of civilian populations and children. Many children are victims of war, but many are also combatants recruited at very early ages. Because they are not often clear about the doctrine or ideology for which they are fighting, war is raw violence and death for these children. In post-war periods, they suffer from psychological sequels and have difficulties to integrate into civil society. It is therefore important to prevent children's involvement in war or violent conflict by all possible means.

50. Even if a United Nations protocol is a document ratified by States, there should be means to help States prevent recruitment of children by non-governmental armed groups.

51. UNESCO is of the opinion that the report should also deal with military training in schools. It is therefore suggested to include the following paragraph in Article 2 of the protocol:

> "A proper overview and analysis should be made of existing military training/education within the formal school system, on a voluntary or compulsory basis as compared to peace education."

52. UNESCO is fully committed to cooperate in the implementation of General Assembly resolution 51/77, especially Part II concerning the protection of children affected by armed conflict which should also help to protect them.

B. International Committee of the Red Cross

[Original: French]
[27 October 1997]

53. The International Committee of the Red Cross (hereinafter "ICRC") fully supports the adoption of an optional protocol to the United Nations Convention on the Rights of the Child aimed in particular at prohibiting the recruitment of children under 18 years of age into the armed forces and armed groups and their participation in hostilities.

54. As in previous years, ICRC took an active part in the third session, held in January 1997, of the Working Group entrusted with the task of drawing up a draft optional protocol. On that occasion it stated its views, which had

been developed over a number of years through studies conducted within the International Red Cross and Red Crescent Movement (hereinafter "the Movement"), 1/ and particularly by ICRC itself.

55. The present document is an analytical summary of the main points to which ICRC attaches special importance and which it has endeavoured to address in recent years, namely, minimum age of recruitment, minimum age of participation in hostilities, the notions of direct and indirect participation, the notions of armed conflict and hostilities, compulsory recruitment and voluntary enlistment, and armed groups.

MINIMUM AGE FOR RECRUITMENT

Position of ICRC: Children under 18 years of age must not be recruited by the armed forces or armed groups.

(a) Legal arguments

56. The arguments in favour of fixing the age of recruitment at 18 years derive both from international humanitarian law and from human rights law.

(i) International humanitarian law

57. At the 1974-1977 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Brazil submitted a proposal to prohibit the recruitment of persons under 18 years of age into the armed forces. 2/ However, this amendment was not accepted and it was a compromise solution that emerged in article 77, paragraph 2, of Protocol I of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (hereinafter "Protocol I"). Under this article, the parties to the conflict, "in recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years (...) shall endeavour to give priority to those who are oldest". Though this provision might not appear particularly imperative, it was a sign that two decades ago States had already recognized the need to try to raise the age of recruitment to 18.

58. Moreover, still in the context of international armed conflicts, it is important to underline the fact that, by virtue of the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (hereinafter "the Fourth Convention") and of Protocol I, persons aged between 15 and 18 who are recruited into the armed forces are no longer entitled to protection against the effects of hostilities as members of the civilian population. Instead, they are considered as combatants within the meaning of article 43 of Protocol I and, in consequence, may be the object of attack.

59. In the context of non-international armed conflicts, neither article 3 common to the Geneva Conventions nor Protocol II of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (hereinafter "Protocol II") contains a provision similar to that of article 77, paragraph 2, of Protocol I. Nevertheless, in the course of the debates it appeared that

certain delegations were already in favour of an age limit of 18 for recruitment. Thus, the fixing of the minimum age at 15 was a decision made under the pressure of consensus and in no way reflected massive opposition to raising the age limit for recruitment. 3/ This point is worthy of special emphasis, as children recruited between the ages of 15 and 18 in the course of non-international armed conflicts are very often called upon to take part in hostilities and this places them in an even more critical position in terms of their protection. 4/

(ii) Human rights

At international level

60. Apart from international humanitarian law, Article 1 of the United Nations Convention on the Rights of the Child, whose wording is repeated in the preamble to the draft optional protocol, stipulates: "For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". The only restriction placed on this principle in the Convention comes in article 38 on recruitment and participation in hostilities. This restriction seems paradoxical, since recruitment and participation in hostilities entail grave risks for children.

61. Furthermore, there is a tendency within the international community to fix the age of majority at 18, so the derogation provided for in article 1 of the Convention on the Rights of the Child will eventually become obsolete. By way of example, in interpreting article 10 of the International Covenant on Civil and Political Rights, the Human Rights Committee mentioned that the age of majority should be 18 as far as criminal matters are concerned. 5/ Similarly, the experts meeting in Vienna from 30 October to 4 November 1994 to discuss the question of children and adolescents held in detention urged States to ensure "that legislation concerning the age of criminal responsibility, civil majority and consent does not have the effect of depriving any child of the full enjoyment of the rights recognized by the Convention on the Rights of the Child". 6/

At regional level

62. The two most recent texts on children to be issued at the regional level both state that the age of majority is 18 years. These are the European Convention on the Exercise of Children's Rights, 7/ adopted by the Council of Europe on 26 January 1996, and the 1990 African Charter on the Rights and Welfare of the Child, adopted by the Organization of African Unity. 8/

(b) Arguments based on practice

63. For a number of years ICRC has been expressing its desire to have the age of recruitment raised from 15 to 18 years, in particular within the framework of the Plan of Action for the International Red Cross and Red Crescent Movement on children affected by armed conflicts (hereinafter "the Plan of Action"). Thus, in its resolution 2C, the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995) took note "of the efforts of the Movement to promote a principle of non-recruitment and

non-participation in armed conflicts of children under the age of 18 years". Similarly, the Council of Delegates 9/ (Geneva, 1995), in its resolution 5, endorsed "the Plan of Action for the Red Cross and Red Crescent Movement (...) which aims to promote the principle of non-participation and non-recruitment of children below the age of 18 years in armed conflicts".

64. It is evident that a child who has been recruited by the armed forces or by an armed group before the age of 18 runs a greater risk of subsequently participating in hostilities should they break out before he has reached that age. He will have undergone military training and there will be the temptation to make use of his skills in the event of armed conflict. This is all the more likely if there is a shortage of troops. In such cases, mobilization is often broader-based and targets the young in particular.

65. Mention should also be made of the question of the recruitment of persons under the age of 18 in education or vocational training establishments operated by or under the control of the armed forces. This creates a potential problem at two levels. First of all, the students might be considered to be members of the armed forces because of their establishment's administrative dependence on the military and may therefore come under attack. Secondly, there is the question of the type of education dispensed in such establishments. If it comprises a military training component, there is every reason to fear that students who are not yet 18 will be required to take part in hostilities because they have received such training.

66. Finally, despite the fact that the age of recruitment is set at 15 years in the Additional Protocols (article 77, paragraph 2, of Protocol I, article 4, paragraph 3 [c], of Protocol II), as well as in the United Nations Convention on the Rights of the Child (article 38, paragraph 3), there is no lack of evidence that even younger children are recruited by the armed forces or armed groups. In cases where children do not possess birth certificates, it is easy for their superiors to pass them off as being older than they really are. However, if the age limit were fixed at 18 years, the recruitment of very young children could certainly be avoided, as their physical appearance would speak for itself.

67. An analysis of national legislation 10/ shows that a large majority (about 70 per cent) of the States included in the study have set the minimum age for compulsory recruitment at 18 years or older, a fact that must be taken into due account in the optional protocol.

MINIMUM AGE FOR PARTICIPATION IN HOSTILITIES

Position of ICRC: Children under 18 years of age must not take part in hostilities

(a) Legal arguments

68. Here again, international humanitarian law and human rights law show that it is contrary to the best interests of the child to allow persons under the age of 18 to take part in hostilities.

(i) International humanitarian law

69. Under international humanitarian law, the parties to an international armed conflict must take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities (Protocol I, art. 77, para. 2). Furthermore, in the context of non-international conflicts, children who have not attained the age of 15 will not be allowed to take part in the hostilities (Protocol II, art. 4, para. 3 [c]). 11/

70. Raising the age for participation in hostilities from 15 to 18 years would bring a number of advantages for the children concerned. In international armed conflicts, as indicated in the discussion on recruitment, it would guarantee such children the protection to which the civilian population is entitled. In non-international armed conflicts, such a step would constitute important progress in law. Under article 4, paragraph 3 (d), of Protocol II, children under the age of 15 who have taken a direct part in hostilities despite the prohibition stipulated in article 4, paragraph 3 (c), of the same Protocol and are captured remain entitled to the special protection provided to children by Article 4, paragraph 3. On the other hand, this special protection is not expressly stipulated for children between 15 and 18 years of age. However, it should be noted that the wording of the article does not rule out the possibility of granting this special protection for children over the age of 15 who have been deprived of their freedom. 12/ Moreover, the child enjoys the protection granted to all persons who are not or who are no longer taking part in the hostilities. 13/ Children in this age-group are also entitled to protection if they are wounded, sick or shipwrecked. 14/ Finally, they continue to benefit from the provision prohibiting the passing of the death sentence on persons aged less than 18 years at the time the offence was committed. 15/ Nevertheless, the whole set of provisions applicable in non-international armed conflicts do not guarantee very broad protection for children between the age of 15 and 18 years, and this is all the more worrying as the majority of present-day conflicts are non-international in nature.

(ii) Human rights

71. Under the United Nations Convention on the Rights of the Child, children are accorded special rights up to the age of 18 years, that is, the upper limit set by the Convention. However, the minimum age limit stipulated for the participation of children in hostilities is 15 years. It is clearly unsatisfactory that children should be entitled to a lower level of protection in situations of armed conflict which, by definition, place their rights in even greater danger.

72. The remarks relating to the tendency of the international community to fix the age of majority at 18 years are equally relevant to the issue of participation in hostilities. 16/

(b) Arguments based on practice

73. It is an accepted fact that children who have taken part in hostilities suffer much more than adults, both psychologically and physically. Numerous

reports show that persons under the age of 18 have not attained the physical and intellectual maturity which would enable them to cope with the harsh reality of armed conflict.

74. Because of the violence they have committed or witnessed, such children may well present serious psychological or emotional disorders, especially as adolescence is the period of life during which individuals absorb the norms and values of society. The physical suffering of children who have taken part in hostilities and are wounded is all the greater since they lack the care and assistance which a child has the right to expect. In many cases it has been observed that these children are drugged before going into battle so as to improve their military performance. 17/ In addition, they have to endure indoctrination, coercion and threats.

75. Moreover, though this may be hard to comprehend, children are more ready to commit atrocities than adults. Lacking maturity, they are not always aware of the consequences of their acts and may unwittingly violate the rules of international humanitarian law. 18/ This is all the more likely if they are under the influence of drugs. Hence they become a threat to the entire civilian population.

76. It should also be pointed out that the participation of children in hostilities places other children at great risk, since the parties to the conflict will have grounds for suspecting that these other children too are involved in the hostilities and may launch a pre-emptive attack against them.

77. The participation of children in hostilities can also have a deleterious effect on society in the long term. The rehabilitation of child soldiers and their reintegration into society are a long and difficult process and they often retain violent attitudes to which other people may fall victim. There are also indirect costs, as the financial and human resources required for the rehabilitation of these children have to be diverted away from other programmes needed after an armed conflict.

78. Finally, attention must be drawn once again to the resolutions of the Council of Delegates and of the 26th International Conference of the Red Cross and Red Crescent, whereby ICRC, as part of the Movement, has declared itself in favour of setting the minimum age limit for participation in hostilities at 18 years.

DIRECT/INDIRECT PARTICIPATION IN HOSTILITIES

Position of ICRC: It is direct and indirect participation in hostilities that must be prohibited. Children must not be involved in hostilities in any capacity whatsoever

(a) Legal arguments

79. In international humanitarian law, a distinction must be drawn once again between international and non-international armed conflicts. In the former, it is direct participation in hostilities by children under the age of 15 which is covered, whereas the provisions relating to the latter speak of participation in hostilities by children without further specification. 19/

ICRC suggested that the word "direct" should be deleted from Protocol I during the Diplomatic Conference of 1974-1977. Unfortunately, that proposal was not accepted. 20/

80. In the same way, article 38, paragraph 2, of the Convention on the Rights of the Child gave rise to much discussion, especially with regard to the prohibition of the participation in hostilities of children under the age of 15. Although ICRC and many delegations were in favour of applying this prohibition to any and all participation in hostilities, in the end the article specified only direct participation. 21/ Moreover, the adoption of article 38 took place amidst great confusion. 22/ ICRC had repeated over and over again that the article represented a step backward in the protection of children under the age of 15 in relation to existing international humanitarian law. 23/

81. The fact is that the reference to "direct participation" considerably weakens the protection conferred on children, because it is not participation in hostilities in general which is covered but just a certain type of participation. This means that the notion of "direct participation" has to be defined. The same term is used in various places in international humanitarian law. 24/ According to the Commentary on the Additional Protocols, "direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place". In other words, it means "acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces". 25/ Similarly, "There should be a clear distinction between direct participation in hostilities and participation in the war effort. The latter is often required from the population as a whole to various degrees". 26/ It has to be emphasized that direct participation does not include acts such as gathering and transmission of military information, transportation of arms and munitions, provision of supplies etc. 27/ However, it is these very tasks which are often entrusted to children, who are less conspicuous because of their size and so more effective than adults. It is therefore important that such activities, which are forms of participation in hostilities, also be prohibited if this provision is to play its full role, especially as the activities in question are often just as dangerous as combat itself.

(b) Arguments based on practice

82. In practice, it very quickly becomes evident that the subtle distinction between direct and indirect participation poses serious problems. During the discussions of the Conference of Government Experts on the Drafting of the Additional Protocols, this distinction already gave rise to divergences of interpretation. One expert, speaking in the context of another article, declared that it would be a good idea to cite specific examples after the reference to "direct participation", and suggested spying, recruitment, propaganda and the transport of arms and of military personnel. 28/ This stance clearly illustrates the difficulties that arise in trying to delimit the various types of participation. Accordingly, it is easy to conceive that armed forces or armed groups might be tempted to adopt different definitions of direct participation, and this would divest the article of all meaning.

83. Furthermore, we know from experience that children who participate in hostilities are very often exploited by military personnel. In particular, they may be subjected to sexual exploitation or forced labour.

84. It has also been noted that in practice a child who is a member of the armed forces or of an armed group and who takes an indirect part in hostilities is very difficult to distinguish from the other members of the forces or group. The child is thus not protected from an enemy attack and runs the same risks as any other child (or adult) participating directly in the hostilities. Finally, children who have been assigned only subordinate tasks very soon find themselves fully involved in the hostilities proper.

ARMED CONFLICTS/HOSTILITIES

Position of ICRC: The participation of children in "hostilities" must be prohibited

85. Taking the existing texts into account, and to avoid any risk of confusion as to the interpretation of the provisions of the optional protocol, it is participation in "hostilities" and not in "armed conflicts" that must be specified.

86. In international humanitarian law, there are numerous references to the concept of "participation in hostilities", or to "direct participation in hostilities" but not to that of "participation in armed conflicts". 29/ To explain the difference between the terms and understand why it is participation in hostilities that must be prohibited, we must first of all define what an armed conflict is.

87. International humanitarian law applies to situations of armed conflict, but neither the Geneva Conventions nor their Additional Protocols define this concept. 30/ It is worth noting that many studies have sought to define the international or internal nature of a conflict but hardly ever address the armed aspect of the conflict. As ICRC sees it, "armed conflict" is not a legal term but rather a de facto situation. 31/

88. It would appear that the notion of armed conflict is not the same when it is applied to an international armed conflict as when it is applied to a non-international armed conflict. In the former case, according to article 2 common to the Geneva Conventions, a conflict is any dispute which arises between two or more States and involves action by the armed forces. It makes no difference how long the conflict lasts or how deadly it is. 32/ Even a minor border incident 33/ qualifies as an armed conflict.

89. In the case of non-international armed conflict, the notion is different and more complex. Article 3 common to the Geneva Conventions has a field of application which is independent of Protocol II, which serves however to complement it. In common article 3 the notion of conflict is not defined, even though certain criteria emerged while it was being drafted. 34/ ICRC is in favour of giving article 3 as wide a scope as possible, as the rules it contains were "recognized as essential in all civilized countries, and

embodied in the municipal law of the States in question, long before the Geneva Conventions were signed". 35/ The article may therefore be applied to low-intensity armed conflicts.

90. Under article 1 of Protocol II, however, different conditions have to be fulfilled before a situation can be described as an armed conflict. 36/ The following criteria have to be met:

(a) The existence of real confrontation between government armed forces and insurgents;

(b) The existence of a responsible command within the insurgent armed group or dissident armed forces;

(c) Their control over a part of the territory;

(d) The sustained and concerted character of military operations; and

(e) The ability of the insurgents to implement Protocol II.

It is expressly stated in article 1, paragraph 2, of Protocol II that "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature" are not armed conflicts.

91. The term "hostilities" was defined during the Diplomatic Conference of 1974-1977 as "acts of war that by their nature or purpose [strike] at the personnel and matériel of enemy armed forces". 37/ Certain delegations considered that the term "hostilities" also covered preparations for combat and return from combat. 38/ During discussions on persons having taken part in the hostilities 39/ it was underlined that the word "hostilities" covers not only the time that the civilian actually makes use of a weapon, but also, for example, the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon. 40/ Article 118 of the Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War (hereinafter "the Third Convention") refers to "active hostilities". It appears that this term must be understood in the same sense as the word "hostilities" used in Article 133 of the Fourth Convention on the same subject. 41/

92. Finally, article 38, paragraph 2, of the Convention on the Rights of the Child refers to direct participation in hostilities and not in armed conflicts.

93. From these definitions, it is evident that it is "participation in hostilities" which must be prohibited, without any intention to signify thereby in non-legal terms that children may participate in armed conflicts. Indeed, taking the example of international armed conflicts, such conflicts do not necessarily give rise to extensive hostilities, as was the case between France and Germany in 1939-1940. An armed conflict is usually a situation during which periods of hostilities are interspersed with periods of truce. It is clear that it is the fact of taking part in acts of war that traumatizes

a child. However, the arguments put forward above must not be interpreted in any way as signifying approval for the participation of children in armed conflicts in general.

COMPULSORY RECRUITMENT/VOLUNTARY ENLISTMENT

Position of ICRC: Both compulsory recruitment 42/and voluntary enlistment of children under the age of 18 must be prohibited

(a) Legal arguments

94. Article 77, paragraph 2, of Protocol I prohibits the recruitment of children under the age of 15, without stating whether this applies to forced enrolment or voluntary enlistment. During the debates on this article, the reference to voluntary enlistment was dropped and, according to the Rapporteur, paragraph 2 is a compromise in which the absolute prohibition on recruiting children under the age of 15 is accompanied by a more flexible restriction in the case of voluntary service. It appeared that "sometimes, particularly in occupied territories and in wars of national liberation, a total prohibition on the voluntary participation of children under 15 years of age would be unrealistic". 43/ ICRC has always been opposed to this possibility of children under the age of 15 enlisting voluntarily, and indeed its draft article referred to a prohibition on voluntary enrolment for such children. 44/ Accordingly, ICRC has upheld the interpretation of article 77, paragraph 2, of Protocol I whereby voluntary enlistment was included in the prohibition stipulated in this provision. 45/

95. During the discussions on article 38 of the Convention on the Rights of the Child, this question of voluntary recruitment was again raised by ICRC, which maintained that the word "recruit" covered both compulsory recruitment and voluntary enlistment. This can be easily understood from the fact that, despite the voluntary nature of the enlistment, the formal act of recruitment and then incorporation into the armed forces or groups remains necessary and it is precisely this act which is prohibited by international humanitarian law.

(b) Arguments based on practice

96. Experience shows that voluntary enlistment is rarely based solely on the will of the child but tends to be conditioned by factors beyond his control. 46/ Indeed, children enlist in the armed forces or armed groups for various reasons:

(a) Economic reasons: the child may choose to enlist in order to enjoy better living conditions. He is often encouraged to do so by his parents, who may not have sufficient resources to support the whole family. In addition, the child is encouraged to enlist by being told about the financial advantages he may obtain. Enlistment may also be considered by the child as a career opportunity and a way of earning a living. Such a situation is all the easier to understand where the child has no other means of survival.

(b) Reasons connected with physical safety: many reports show that the desire for revenge is rarely given by a child as a reason for voluntary enlistment, whereas the idea of obtaining protection is much more prevalent. Children who have witnessed murders or massacres are more inclined to join with the armed forces or armed groups, believing that they will enjoy a greater degree of security in face of the dangers surrounding them.

(c) Reasons connected with culture and environment: children may enlist because, in their country, the military life is considered to be a way of achieving a higher social standing and obtaining a measure of glory. In some societies, it is also a way of proving one's manhood. In addition, children may come under pressure from peers who have already been recruited.

(d) Reasons connected with beliefs or convictions: in this case, the enlistment of the child may be considered genuinely voluntary. The convictions in question may be of a political, religious or social nature. Nevertheless, it is necessary to draw a distinction between such cases and those in which the child has been influenced, manipulated or indoctrinated by adults.

ARMED GROUPS

Position of ICRC: Every party to a conflict is required to apply the provisions of articles 1 and 2 of the optional protocol. The application of these provisions has no effect on the legal status of the parties to the conflict

(a) Legal arguments

97. Above all, it is important to emphasize that the obligations which stem from the optional protocol must be the same for all the parties to the conflict. This means, for example, that the obligations imposed on armed groups must not be greater than those imposed on the armed forces. It is a rule of international humanitarian law that the parties to a conflict must be treated on an equal footing. This equality between the parties must be respected even in the absence of reciprocity in the application of international humanitarian law. Accordingly, one party to a conflict cannot refuse to apply international humanitarian law on the grounds that the adverse party has failed to comply with it. 47/ One of the direct consequences of this principle is the fact that the application of international humanitarian law has no effect on the legal status of parties to a conflict.

Definition of an armed group

98. First of all, it is important to define what is meant by a "party to the conflict". To do so, a distinction must be drawn between international and non-international armed conflicts.

99. In the case of international armed conflicts, the parties to the conflict are principally the "High Contracting Parties" within the meaning of the Geneva Conventions and their Additional Protocols. 48/ The armed forces

of these parties are defined in various provisions of international humanitarian law which deal with the armed forces themselves, prisoners of war and combatants. 49/ In addition, Protocol I extends the concept of "party to the conflict" to cover peoples fighting against colonial domination, foreign occupation or racist regimes in the exercise of their right of self-determination. 50/ In general, the parties to an international armed conflict must be States and the combatants members of formations organically dependent on a State. 51/

100. In the context of non-international armed conflicts, not all the "parties to the conflict" are subjects of international law. Article 3 common to the Geneva Conventions refers to such parties, but without further explanation. This implies that the article is applicable even in cases where no government armed force is a party to the conflict, that is, in a situation involving several warring factions. 52/ Protocol II, which applies in non-international conflicts, is more precise. Non-international armed conflicts take place between the armed forces of a High Contracting Party and dissident armed forces or organized armed groups. 53/ In the definition of an armed conflict, 54/ reference is made to the various conditions that have to be met for a situation to qualify as a non-international armed conflict; these conditions must be borne in mind and developed to arrive at a definition of "dissident armed forces" and "armed groups".

101. Dissident armed forces are armed forces which have risen up against those remaining loyal to the Government. Armed groups - usually insurgents - must satisfy various objective criteria listed in Protocol II, 55/ in the same way as dissident forces.

(a) Responsible command

This implies a certain degree of organization of the armed group or dissident forces. Without being similar to the hierarchy of the regular armed forces, this degree of organization has to be sufficient to enable the group or forces to conduct sustained and concerted military operations and to impose discipline.

(b) Control over a part of the territory

"Control" is understood to mean domination of a part of the territory, but what part of the territory should be controlled is not specified. However, this criterion must be linked with the preceding one, since such control must be sufficient to enable the armed group or dissident forces to conduct sustained and concerted military operations and to implement the Protocol.

(c) The sustained and concerted character of military operations

This is an objective criterion which takes no account of the duration or intensity of the operations. On the other hand, it should be understood that such operations must not be sporadic and that they are planned or prepared by organized armed groups capable of taking concerted action.

(d) Ability to implement the Protocol

This is a fundamental criterion which justifies the other elements of the definition. It sets a threshold for application which may seem high, but it is no more than should be expected of groups which meet the previous conditions. 56/

Legal status

102. International humanitarian law makes it clear that its application by the various parties to a conflict has no effect on their legal status. This provision, it is true, was laid down in the Geneva Conventions only with reference to non-international armed conflicts. 57/ However, during the negotiations leading up to the Additional Protocols, the provision was expressly applied to international armed conflicts. 58/ Thus the application of international humanitarian law in no way changes the legal status - whether or not contested by the adverse party - that a party had when the conflict broke out, and neither establishes nor consolidates an attribute which did not previously exist.

(b) Arguments based on practice

103. It must be stressed that most of today's armed conflicts are of a non-international nature. Consequently, it is very important to include a provision which is binding on armed groups.

104. It was rightly pointed out by the United Nations Committee on the Rights of the Child that, in the 28 conflicts in progress in January 1997, "persons below the age of 18 were being used heavily by non-governmental groups in hostilities, both directly and indirectly. It was, therefore, most important that the optional protocol should address the issue, obliging States parties to take all possible steps to prevent the recruitment of children by such insurgent groups in their territory. It was also recommended that the terminology of the optional protocol should not go beyond that contained in the Protocol II Additional to the 1949 Geneva Conventions". 59/

105. The refusal to include armed groups is often based on the fact that it is impossible to apply provisions relating to groups which by definition cannot formally be contracting parties to treaties of international law. However, it has repeatedly been shown in practice that governments and international or non-governmental organizations can exert influence on such groups and persuade them to acknowledge that they have to respect certain obligations of a humanitarian nature so as to safeguard and protect the population under their control. 60/ ICRC has been actively endeavouring for many years to exert such influence with regard to the rules of international humanitarian law.

III. COMMENTS SUBMITTED BY NON-GOVERNMENTAL ORGANIZATIONS

A. International Federation Terres des Hommes

[Original: French]
[29 September 1997]

106. The International Federation Terres des Hommes (FITDH) considers that the question of the involvement of children in armed conflicts is of capital importance. Various sources indicate that combatants under 18 years of age are participating in at least 33 conflicts which are continuing or which came to an end during the past two years, and that dozens or even hundreds of thousands are serving in government or non-government forces. This demonstrates the importance of preparing a draft optional protocol on involvement of children in armed conflicts, which will have a definite impact on the situation of large numbers of children.

107. FITDH urges the working group on a draft optional protocol to fix the minimum age for recruitment into armed forces at 18 in respect of compulsory service as well as voluntary enlistment, since in many cases a minor's decision to enlist in the armed forces is anything but free, being dictated by various circumstances, such as poverty, coercion, insecurity, a broken home or lack of alternatives, and parental consent is not enough of a guarantee. Moreover, one of the best ways of preventing the participation of children in hostilities is to fix the general age for recruitment at 18. So long as child soldiers are present in armed forces, it will always be tempting to use them in actual combat.

108. FITDH wishes to draw the working group's attention to a point to which insufficient importance has been attached, namely, that not all child soldiers are boys; there are also girl soldiers, particularly in non-governmental forces. Girls may be assigned the same dangerous tasks as boys and endure the same ill-treatment but they are at greater risk of the violence and sexual abuse that affect their health. An age limit of 18 would therefore also strengthen the protection enjoyed by girls, particularly from the standpoint of sexual exploitation.

109. Lastly, FITDH would also draw attention to one of the fundamental principles of the Convention on the Rights of the Child, namely, that of the best interest of the child, with which the use of child soldiers is at variance. Moreover, with regard to the right to education, FITDH doubts very much that a child could learn anything constructive by participating in hostilities.

B. World Alliance of Young Men's Christian Associations

[Original: English]
[16 September 1997]

CHILDREN IN ARMED CONFLICTS

110. From the early part of this century in particular, the YMCA has been concerned about and involved in situations of war. Our work in this field has

consisted of services to refugees and to men on the war front. Refugee services have always taken women and children as priority. Recent trends have shown that rebel groups have conscripted children for the fighting forces. They are sorely unequipped to handle the conditions of war both at an emotional and physical level. Consequently, they get easily killed or severely injured and more importantly they are left traumatized in several ways. It has been established that many enemy acts of brutalities are directed at children with the single purpose of demoralizing the other side. Innocent children are raped, tortured and mutilated. Children are even used as mind detectors in some situations. The girl child is often subjected to sexual abuse. And, as sociologists have observed, there is war going on in the minds of children.

111. Citizens groups must take initiatives to assist and protect children exposed to violence in conflict situations. Lessons can be learned from listening to affected children and peace education might build on their experiences and stories.

112. The YMCA would like to see:

- Governments work hand-in-hand with NGOs to help victims of violence in situations of war and other forms of conflict.

- International covenants and agreements enforced and strengthened to make punishable as a crime the recruitment of children as combatants.

- Economic development used as a means to prevent poor children from being easily tempted into joining the armed forces as a way of meeting immediate economic needs for themselves and their families.

- Rehabilitation work of a comprehensive nature - educational, psychological (trauma counselling), vocational - for children affected by war.

- Peace education promoted as part of educational curriculum in schools.

Notes

1/ The Movement comprises all the National Red Cross and Red Crescent Societies, the ICRC and the International Federation of Red Cross and Red Crescent Societies.

2/ Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-1977, Federal Political Department, Bern, 1978 (hereinafter "O.R."), III, p. 301.

3/ See Y. Sandoz, C. Swinarski, B. Zimmermann (eds.), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (hereinafter "Commentary on the Additional Protocols"), ICRC, Geneva, 1986, p. 1,377.

4/ See below: Minimum age for participation in hostilities, A. a.

5/ Report of the Human Rights Committee of 9 October 1992, United Nations document A/47/40, paragraph 13.

6/ United Nations document E/CN.4/1995/100, paragraph 28 (a) of the Recommendations.

7/ European Treaty Series, ETS No. 160. See article 1, paragraph 1.

8/ OAU document CAB/LEG/24.9/49 (1990), article 2.

9/ The Council of Delegates comprises representatives of the National Red Cross and Red Crescent Societies, ICRC and the International Federation.

10/ See tables in G. Goodwin-Gill, I. Cohn, Child soldiers: The role of children in armed conflicts, Clarendon Press, Oxford, 1994, pp. 186-208; R. Brett, M. McCallin, Children: The invisible soldiers, Rädda Barnen (Swedish Save the Children), 1996, pp. 53-64.

11/ For further information on the protection of child soldiers in international humanitarian law, see M.T. Dutli, "Captured child combatants", International Review of the Red Cross, No. 278, September-October 1990, pp. 421-434.

12/ Commentary on the Additional Protocols, p. 1,378.

13/ Article 3 common to the Geneva Conventions.

14/ Part III of Protocol II.

15/ Article 6, paragraph 4, of Protocol II.

16/ See above: Minimum age for recruitment, (a) (i).

17/ Examples of these physical and psychological traumas may be found in the following works: Goodwin-Gill/Cohn, op. cit., pp. 105-112; K. Hedlund Thulin (ed.), Children in armed conflict: Background document to the Plan of Action concerning children in armed conflict, Henry Dunant Institute, Geneva, 1995, pp. 35-41; United Nations document A/51/306: The impact of armed conflict on children: Report of the Expert of the Secretary-General, Ms Graça Machel (hereinafter "Machel report"), paragraphs 162-165; Brett/McCallin, op. cit., pp. 171-181; Human Rights Watch/Africa, Human Rights Watch Children's Rights Project, Easy prey: Child soldiers in Liberia, Human Rights Watch, New York/Washington/Los Angeles/London/Brussels, 1994, pp. 35-38.

18/ See, for example, Easy prey: Child soldiers in Liberia, op. cit., pp. 31-33.

19/ Article 77, paragraph 2, of Protocol I and article 4, paragraph 3 (c), of Protocol II.

20/ O.R. XV, pp. 63-75, CDDH/III/SR.45.

21/ United Nations document E/CN.4/1988/28, paragraphs 72-74.

22/ United Nations document E/CN.4/1989/48, paragraphs 611-616.

23/ F. Krill, "United Nations Convention on the Rights of the Child: A controversial article on children in armed conflicts", Dissemination, No. 12, August 1989, pp. 11-12; M.T. Dutli, op. cit., p. 426; F. Krill, "The protection of children in armed conflicts", in M. Freeman, P. Veerman (eds.), The ideologies of children's rights, Martinus Nijhoff Publishers, Dordrecht, 1992, p. 353.

24/ Articles 43, paragraph 2, and 51, paragraph 3, of Protocol I.

25/ Commentary on the Additional Protocols, pp. 516 and 619.

26/ Commentary on the Additional Protocols, p. 619. The war effort has been defined as "all national activities which by their nature or purpose would contribute to the military defeat of the adversary" (O.R. XIV, p. 14, CDDH/III/SR.2, para. 8).

27/ Commentary on the Additional Protocols, p. 901.

28/ Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Report on the work of the Conference, Vol. I, ICRC, Geneva, 1972, p. 143.

29/ For example, see article 3 common to the 1949 Geneva Conventions, articles 43, paragraph 2, 45, 47, paragraph 2, 51, paragraph 3, 67, paragraph 1, and 77, paragraphs 2 and 3, of Protocol I and articles 4, paragraph 3, and 13, paragraph 3, of Protocol II.

30/ H. Haug, Humanity for all: The International Red Cross and Red Crescent Movement, Henry Dunant Institute, Geneva/Paul Haupt, Bern, 1993, pp. 510-511.

31/ J.S. Pictet (gen. ed.), Commentary on the Geneva Convention relative to the Protection of Civilian Persons in Time of War (hereinafter "Commentary on the Fourth Geneva Convention"), ICRC, Geneva, 1956, pp. 20-21.

32/ Commentary on the Fourth Geneva Convention, p. 20.

33/ D. Schindler, "The different types of armed conflicts according to the Geneva Conventions and Protocols", extract from the Recueil des cours de l'Académie de droit international, 1979, Vol. 163, p. 131.

34/ Commentary on the Fourth Geneva Convention, pp. 35-36.

35/ Ibid., p. 36.

36/ Commentary on the Additional Protocols, pp. 1351-1353.

37/ O.R. XIV, p. 14, CDDH/III/SR.2, paragraph 8.

38/ O.R. XV, p. 330, CDDH/III/224.

39/ Article 45 of Protocol I.

40/ Commentary on the Additional Protocols, pp. 618-619.

41/ Commentary on the Fourth Geneva Convention, pp. 514-515.

42/ "Recruitment" should be understood as encompassing not only formal recruitment but also any de facto recruitment involving no formalities. The relevant point is that the child is physically integrated into the armed forces or an armed group.

43/ O.R. XV, p. 465, CDDH/407/Rev. 1, paragraph 61.

44/ O.R. I, Part Three, p. 22.

45/ See M.T. Dutli, op. cit., pp. 423-424, and Commentary on the Additional Protocols, p. 901.

46/ See, for example, K. Hedlund Thulin, "Child soldiers: The role of the Red Cross and Red Crescent Movement", in Humanitäres Völkerrecht, No. 3, 1992, p. 143; Machel report, paragraphs 38-43; Brett/McCallin, op. cit., pp. 91-102.

47/ J.S. Pictet (gen. ed.), Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952, p. 25; see also article 60, paragraph 5, of the Vienna Convention on the Law of Treaties of 23 May 1969, United Nations, Treaty Series, Vol. 1155, p. 331.

48/ The term "party" should be understood within the meaning of article 2, paragraph 1 (g) of the Vienna Convention on the Law of Treaties, namely as "a State which has consented to be bound by the treaty and for which the treaty is in force".

49/ Article 2 common to the Geneva Conventions, article 4A, paragraphs 1-3, of the Third Convention, article 43, paragraphs 1 and 3, of Protocol I.

50/ Articles 1, paragraphs 4, and 96, paragraph 3, of Protocol I.

51/ K. Ipsen, "Kombattanten und Kriegsgefangene", in H. Schöttler, B. Hoffmann (eds), Die Genfer Zusatzprotokolle: Kommentare und Analysen, Osang Verlag, Bonn, 1993, p. 156.

52/ Commentary on the Additional Protocols, pp. 1349-1350.

53/ Article 1, paragraph 1, of Protocol II. The term "armed forces of a High Contracting Party" should be deemed to mean "all the armed forces - including those which under some national systems might not be called regular forces - constituted in accordance with national legislation" (O.R. X, p. 94, CDDH/I/238/Rev. 1).

54/ See above: Armed conflicts/hostilities.

55/ Article 1, paragraph 1, of Protocol II.

56/ For further details of these criteria, see Commentary on the Additional Protocols, pp. 1351-1353.

57/ Article 3, paragraph 2, common to the Geneva Conventions.

58/ Article 4 of Protocol I. This provision is not expressly restated in Protocol II, but it is implied, inasmuch as article 1 specifies: "This Protocol, which develops and supplements article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application...".

59/ United Nations document E/CN.4/1997/96, paragraph 45.

60/ Examples may be found in the Machel report, paragraph 61.